

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED
2006 SEP 25 PM 12:13

CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY _____
DEPUTY

CHARLES D. HALEY, JOHN FERRIS,
EDWARD C. GARDERE, JR.,
JOHN A. GARDERE, SUSAN
GARDERE MANTZ, ROBERT FORD
GARDERE, ALBERT MADLEY,
FRANK BUELL, CHARLES D. BRINER,
HOWARD RACHOFISKY, STEVE
STURMAN, PAUL BERGER, VAN
ELLIS, EDWARD HEATHCOTT,
JOHN MANRY, MARITA B. PARRISH,
ELMO WADE, JACK WOODWORTH,
JOYCE ROTHERMEL, AND
JOSEPH A. STANLEY, III,
Plaintiffs,

v.

JPMORGAN CHASE BANK,
N.A.,
Defendant.

C.A. No. **A06CA757 LY**

JURY

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1446 and 1331, Defendant JPMorgan Chase Bank ("Defendant") respectfully files this Notice of Removal from the Probate Court of Travis County, Texas, Cause No. 846288, to the United States District Court for the Western District of Texas, Austin Division. In support of this notice, Defendant states as follows:

COMMENCEMENT AND SERVICE

1. Plaintiffs are Charles D. Haley, Joseph A. Stanley, III, Joyce Rothermel, Jack Woodworth, Elmo Wade, Marita B. Parrish, John Manry, Edward Heathcott, Van Ellis, Paul Berger, Steve Sturman, Howard Rachofsky, Charles D. Briner, Frank Buell, Albert Madley, Robert Ford Gardere, Susan Gardere Mantz, John A. Gardere, Edward C. Gardere, Jr., John Ferris; Defendant is JPMorgan Chase Bank, N.A.

2. On March 30, 2006, Plaintiffs sued Defendant in the Probate Court of Travis County, Texas, Cause No. 846288, styled *Charles D. Haley, et al., v. JPMorgan Chase Bank* (the "Lawsuit").

3. Defendant was served with the Lawsuit on April 5, 2006. Although this case was not removable when originally filed, it became removable on September 11, 2006, because of deemed admissions which establish that Plaintiffs' case is based upon an alleged cause of action under federal law. *See* 28 U.S.C. §1446(b). Plaintiffs were served with requests for admissions on August 9, 2006. Under the Texas Rules of Civil Procedure, if a response is not timely served, the requests are considered admitted without the necessity of a court order. Tex. R. Civ. P. 198.2(c). Defendant files this notice of removal within 30 days of constructive receipt of the deemed admissions. *See id.*

GROUND FOR REMOVAL

4. Removal is proper because Plaintiffs' suit involves a federal question. 28 U.S.C. §§1331, 1441(b); *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 125 S. Ct. 2363, 2367 (2005); *Long v. Bando Mfg. of Am., Inc.*, 201 F.3d 754, 757-58 (6th Cir. 2000); *Peters v. Union Pac. R.R.*, 80 F.3d 257, 260 (8th Cir. 1996). Specifically, Plaintiffs' claim arises under Section 14(a) of the Securities and Exchange Act of 1934, 15 U.S.C. §78(n)(a)(1988) and SEC Rule 14a-9, 17 C.F.R. §240.14a-9 (1990).

5. Rule 14a-9(a) provides: "[N]o solicitation subject to the proxy rules shall be made...that contains any statement which is false or misleading with respect to a material fact or omits to state a material fact necessary in order to make the statements therein not misleading."

6. In the requests for admissions, Plaintiffs were instructed to admit or deny the following assertions: "You contend that the Proxy Statement...omitted material facts." Plaintiffs were also instructed to admit or deny: "You contend that the Proxy Statement...issued

by the Trustee failed to disclose material facts, making it misleading.” (Req. for Admis. No. 28 and 30). Plaintiffs are deemed to have admitted these assertions due to their failure to respond timely to the requests for admissions. *See* Tex. R. Civ. P. 198.2(c).

7. Plaintiffs deemed admissions allege a cause of action under federal law which creates a basis for removal.

8. All pleadings, process, orders, and other filings in the state court action are attached to this notice as required by 28 U.S.C. §1446(a).

9. Venue is proper in this district under 28 U.S.C. §1441(a) because the state court where the action has been pending is located in this district.

10. Defendant will promptly file a copy of this notice of removal with the clerk of the state court where the action has been pending.

JURY DEMAND

11. Plaintiffs demanded a jury in the state court action.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Defendant asks the court to remove the action to this federal court.

Respectfully submitted,

By: 

Craig L. Stahl
Texas Bar No. 19006700
Andrews Kurth LLP
Waterway Plaza Two
10001 Woodloch Forest Dr., Suite 200
The Woodlands, Texas 77380
Telephone: (713) 220-4834
Facsimile: (713) 238-7478

ATTORNEY-IN-CHARGE FOR DEFENDANT
JPMORGAN CHASE BANK, N.A.

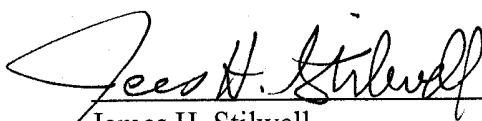
Of Counsel:

James Stilwell
Texas Bar No. 00794697
Andrews Kurth LLP
Waterway Plaza Two
10001 Woodloch Forest Dr., Suite 200
The Woodlands, Texas 77380
Telephone: (713) 220-4801
Facsimile: (713) 238-7478

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of September 2006, a true and correct copy of the foregoing Notice of Removal was served by fax and by certified mail, return receipt requested, to the following counsel of record:

T. Wesley Holmes
James A. Fisher
Andrew T. Turner
Fisher Holmes & Turner
2800 Lincoln Plaza
500 North Akard Street
Dallas, Texas 75201


James H. Stilwell

NOTICE OF REMOVAL ATTACHMENTS INDEX

Tab	Description	Date
1.	Plaintiffs' Original Petition and Demand for Trial by Jury	4/10/06
2.	Original Answer and Request for Disclosure of JPMorgan Chase Bank, N.A.	5/01/06
3.	JPMorgan Chase Bank, N.A.'s First Requests for Admissions to Plaintiff Charles D. Haley, Joseph A. Stanley, III, Joyce Rothermel, Jack Woodworth, Elmo Wade, Marita B. Parrish, John Manry, Edward Heathcott, Van Ellis, Paul Berger, Steve Sturman, Howard Rachofsky, Charles D. Briner, Frank Buell, Albert Madley, Robert Ford Gardere, Susan Gardere Mantz, John A. Gardere, Edward C. Gardere, Jr., John Ferris	8/9/06
4.	Notice of Non- Suit as to Albert Madeley	8/31/06
5.	Plaintiffs' Motion to Extend Time to Respond to Requests for Admission and Requests for Production	9/16/06
6.	JPMorgan Chase Bank N.A.'s Response to Plaintiffs' Motion to Extend Time	9/22/06

09/22/2006 15:28 FAX 8543129

COUNTY CLERK CIVIL PROB

001

>> TO RETURN: F1-PREV.MENU/RUN F2-MAIN MENU F3-REPORT MENU <<

CIV200
DOCKET DETAILT R A V I S C O U N T Y
County Probate Court Mgmt SysSEPTEMBER 22, 2006
TIME: 15:25CAUSE NUMBER : 84628
CAUSE STATUS : PENDING
ORIG. FILING : 03/31/2006
TYPE OF SUIT : Civil Actions
COURT ASSIGN : Travis County Probate Court No. 1
JURY TRIAL : NOIN RE THE FREEPORT-MCMORAN OIL&GAS ROYALTY TRUST
JPMORGAN CHASE BANK National Assoc.

>>>>>>>>>> I N V O L V E D P A R T I E S <<<<<<<<<<<<

TYPE:

>>> SUBJECT

P01 : IN RE THE FREEPORT-MCMORAN OIL&GAS ROYALTY TRUST
 PA01: T. WESLEY HOLMES BAR # 09908495
 2800 LINCOLN PLAZA 500 NORTH AKARD ST. DALLAS TX 75201
 PA01: JAMES A. FISHER BAR # 07051650
 2800 LINCOLN PLAZA 500 NORTH AKARD ST. DALLAS TX 75201
 PA01: ANDREW T. TURNER BAR # 24008968
 2800 LINCOLN PLAZA 500 NORTH AKARD ST. DALLAS TX 75201
 P02 : CHARLES D. HALEY
 P03 : JOHN FERRIS
 P04 : EDWARD C. GARDERE JR.
 P05 : JOHN A. GARDERE
 P06 : SUSAN GARDERE MANTZ
 P07 : ROBERT FORD GARDERE
 P08 : ALBERT MADLEY
 P09 : FRANK BUELL
 P10 : CHARLES D. BRINER
 P11 : HOWARD RACHOFISKY
 P12 : STEVE STURMAN
 P13 : PAUL BERGER
 P14 : VAN ELLIS
 P15 : EDWARD HEATHCOTT
 P16 : JOHN MANRY
 P17 : MARITA B. PARRISH
 P18 : ELMO WADE
 P19 : JACK WOODWORTH
 P20 : JOYCE ROTHERMEL
 P21 : JOSEPH A. STANLEY III

>>> REPRESENTATIVE

D01 : JPMORGAN CHASE BANK National Assoc.

>>>>>>> D O C K E T S H E E T P R O F I L E <<<<<<<<<<<<

TRANS	JUDG	RECORDED	CLRK	T	DESCRIPTION OF
DATE	INIT	VOL	PAGE	INIT	(I)ssuance, (P)leading, (O)rder
033106				RT	P Application
033106				RT	P Notation of Civil Jury Fee Deposit
033106				MP	I Personal Citation - S (Precinct5)
					CT CORPORATION SYSTEM

050106		ML	P	ORIGINAL ANSWER & REQ FOR DISCLOSURE OF JPMORGAN CHASE BANK
090606		MC	P	NOTICE OF NON-SUIT
090606		MC	O	Judge's Fee / Order
091106	GH	JM	O	ORDER GRANTING NONSUIT
092006	0000 0000	CA	P	PLFS' MTN TO EXTEND TIME TO RESPOND TO REQUESTS FOR ADMISSION & REQUESTS FOR PRODUCTION
092006		CA	P	CVR LTR FROM T WELEY HOLMES, DTD 9/29/06 RE: REQUEST FOR SETTING ON HEARING/TELEPHONE TO CT 9/20/06

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Charles D. Haley, et al.

(b) County of Residence of First Listed Plaintiff Mesquite, Texas
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

T. Wesley Holmes, Fisher Holmes and Turner P.C.
2800 Lincoln Plaza, 500 North Akard St.
Dallas, TX 75201

DEFENDANTS

JPMorgan Chase Bank, N.A.

County of Residence of First Listed Defendant Harris, Texas
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

Craig L. Stahl, Andrews Kurth LLP
10001 Woodloch Forest
The Woodlands, TX 77380

A06CA757 LY

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
☒ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):
Section 14(a) of Securities and Exchange Act of 1934, 15 U.S.C. Sec. 78n(a)

Brief description of cause:

Alleged omissions of material fact rendering proxy statement false and/or misleading

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):


JUDGE

DOCKET NUMBER

DATE

Sept. 25, 2006

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Supplement to JS 44 Civil Cover Sheet
Cases Removed from State District Court

This form must be filed with the Clerk's Office no later than the **first business day** following the filing of the Notice of Removal. Additional sheets may be used as necessary.

The attorney of record for the removing party **MUST** sign this form.

STATE COURT INFORMATION:

1. Please identify the court from which the case is being removed; the case number; and the complete style of the case.

Probate Court of Travis County

Cause No. 84628

In Re the Freeport-McMoran Oil & Gas Trust

Charles D. Haley, John Ferris, Edward C. Gardere, Jr., John A. Gardere, Susan Gardere Mantz, Robert Ford Gardere, Albert Madley, Frank Buell, Charles D. Briner, Howard Rachofsky, Steve Sturman, Paul Berger, Van Ellis, Edward Heathcott, John Manry, Marita B. Parrish, Elmo Wade, Jack Woodworth, Joyce Rothermel, and Joseph A. Stanley, III, Plaintiffs, v. JPMorgan Chase Bank, National Association Defendant.

2. Was jury demand made in State Court? Yes ☒ No ☐

If yes, by which party and on what date?

Plaintiffs

March 30, 2006

Party Name

Date

STATE COURT INFORMATION:

1. List all plaintiffs, defendants, and intervenors still remaining in the case. Also, please list the attorney(s) of record for each party named and include the attorney's firm name, correct mailing address, telephone number, and fax number (including area codes).

Plaintiffs: Charles D. Haley, John Ferris, Edward C. Gardere, Jr., John A. Gardere, Susan Gardere Mantz, Robert Ford Gardere, Albert Madley, Frank Buell, Charles D. Briner, Howard Rachofsky, Steve Sturman, Paul Berger, Van Ellis, Edward Heathcott, John Manry, Marita B. Parrish, Elmo Wade, Jack Woodworth, Joyce Rothermel, and Joseph A. Stanley, III
Plaintiffs' Attorney of Record:

T. Wesley Holmes

Fisher Holmes & Turner P.C.

2800 Lincoln Plaza, 500 North Akard Street, Dallas, TX 75201

Phone: 214.661.9400 Fax: 214.661.9400

Defendant: JPMorgan Chase, N.A.

Defendant's Attorney of Record:

Craig Stahl

Andrews Kurth LLP

10001 Woodloch Forest, Ste. 200, The Woodlands, TX 77380

Phone: 713.220.4834 Fax: 713.238.7478

2. List all parties that have not been served at the time of the removal, and the reason(s) for non-service.

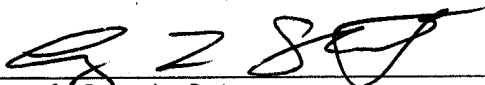
3. List all parties that have been non-suited, dismissed, or terminated, and the reason(s) for their removal from the case.

Albert Madley, by Notice of Nonsuit (by request)

COUNTERCLAIMS, CROSS-CLAIMS, and/or THIRD-PARTY CLAIMS:

1. List separately each counterclaim, cross-claim, or third-party claim still remaining in the case and designate the nature of each such claim. For each counterclaim, cross-claim, or third-party claim, include all plaintiffs, defendants, and intervenors still remaining in the case. Also, please list the attorney(s) of record for each party named and include the attorney's firm name, correct mailing address, telephone number, and fax number (including area codes).

VERIFICATION:



Attorney for Removing Party

9-25-06
Date

JPMorgan Chase Bank NA

Party/Parties

AO82
(Rev. 4/90)

ORIGINAL

387414

RECEIPT FOR PAYMENT
UNITED STATES DISTRICT COURT
for the
WESTERN DISTRICT OF TEXAS
 at Austin

RECEIVED FROM

Andrew & Kenneth
10001 Woodloch Forest #200
The Woodlands TX 77380

Fund	
6855XX	Deposit Funds
604700	Registry Funds
	General and Special Funds
508800	Immigration Fees
085000	Attorney Admission Fees
086900	Filing Fees
322340	Sale of Publications
322350	Copy Fees
322360	Miscellaneous Fees
143500	Interest
322380	Recoveries of Court Costs
322386	Restitution to U.S. Government
121000	Conscience Fund
129900	Gifts
504100	Crime Victims Fund
613300	Unclaimed Monies
510000	Civil Filing Fee (1/2)
510100	Registry Fee

ACCOUNT	AMOUNT
086900	6000
570000	19000
086400	10000
TOTAL	350.00
Case Number or Other Reference	
1:06-CV-757	

New Case

Haley v. JP Morgan

\$ Checks and drafts are accepted subject to collection and full credit will only be given when the check or draft has been accepted by the financial institution on which it was drawn.

DATE	9-25-06	Cash	Check	M.O.	Credit
			Y		

DEPUTY CLERK

[Signature]